

**GUIDELINE ON CONSULTATION
IN THE
ENVIRONMENTAL ASSESSMENT PROCESS**

December 15, 2000

- ✓ Those interested in information about the environmental assessment process should consult the Ministry of the Environment web site or contact the ministry to obtain process, consultation and mediation guidance.
(www.ene.gov.on.ca/envision/env_reg/ea/English/index.htm)
- ✓ Guide users should check the Ministry of the Environment web site or call the Environmental Assessment and Approvals Branch to find out if there have been any revisions to this guide.
- ✓ Any suggestions for revision or clarification are welcomed and should be sent to:

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1.0 Introduction

Environmental assessment (EA) is a decision-making process used to promote good environmental planning by assessing the potential effects of certain activities on the environment. In Ontario, this process is defined and finds its authority in the *Environmental Assessment Act* (EAA). The purpose of the EAA is to provide for the protection, conservation, and wise management of Ontario's environment. To achieve this purpose, the EAA promotes responsible environmental decision-making and ensures that the public has an opportunity to comment on undertakings (the proposed project or activity) that may affect them. In the EAA, environment is broadly defined to include the natural, social, cultural, and economic environments.

One element of responsible environmental decision-making is ensuring that those with a potential interest in a proposal – such as, a new highway, a hydroelectric transmission corridor, or a landfill site – are provided with opportunities to contribute to decision-making in a meaningful way and to influence decisions where possible.

1.1 Purpose of This Guidance Document

The purpose of this guideline is to outline the Ministry of the Environment's (the "ministry") expectations regarding appropriate consultation. This guideline is not intended to be a "how to" manual; it is, rather, a guide to encourage all those involved with consultation and the EA process – as proponents, participants, or reviewers – to recognize:

- the elements to consider when developing a consultation program;
- the value of establishing some principles to guide both the consultation program and decision-making; and,
- what the ministry is looking for when reviewing documents submitted as part of the EA process.

There is no single blueprint for effective consultation, and innovative ideas are being introduced into the practice of environmental decision-making all the time. This guideline sets out some basic considerations for those concerned with improving the quality of EA decision-making in Ontario.¹ This guideline replaces the 1987 *Guideline on Pre-Submission Consultation in the EA Process*.

Although written to be used primarily for proposals requiring a Terms of Reference (ToR) and an EA, this guideline will also be helpful to proponents and parties involved with projects subject to the Class EA process. The contents of this guideline should be considered in conjunction with any other relevant guidance documents available from the ministry or the Environmental

¹ This guideline focuses on consultation and its role as part of the EA process. For more detailed information about how to design a consultation program, the reader is encouraged to refer to the ministry's *Public Consultation Guide*, January 1994 (Publication No. PIBS 2819). Copies of the 1994 guide can be obtained from the ministry's Public Information Centre, 135 St. Clair Ave. W., Toronto, Ontario, M4V 1P5; tel: 1.800.565.4923 or 416.325.4000.

Assessment and Approvals Branch (EAAB). Class EA documents give specific guidance to proponents on developing consultation programs when conducting a Class EA. Other ministry guidelines, such as, *A Guide to Preparing Terms of Reference for Environmental Assessments* emphasize the role of consultation when preparing submissions under the EAA.

1.2 Who Should Use This Guideline?

This guideline is intended to assist and guide:

- proponents in the design and development of consultation strategies;
- government ministries and agencies asked to participate in the decision-making process for a ToR or an EA;
- interested parties who wish to participate in the EA decision-making process;
- members of the Environmental Review Tribunal or a Joint Board as allowed under the *Consolidated Hearings Act* in their assessment of a proponent's decision-making process; and,
- EAAB staff when advising proponents and interested parties about public consultation matters.

1.3 What Is Consultation?

Consultation in the EA process comprises (refer to the ministry's *Environmental Assessment Glossary*, Guideline E-5, September 1996):

the activities carried out by a proponent to provide a two-way communication process to involve interested stakeholders in the planning, implementation and monitoring of an undertaking.

Consultation with the public, government agencies and ministries, municipalities, and other affected parties is now a required part of the EA process and a key element of the EAA. In 1997, amendments to the EAA formally recognized the benefits of early consultation by legally requiring proponents to consult with the public, reinforcing the importance of consultation in responsible environmental decision-making. Public consultation protects the public interest and ensures that issues are identified early and resolved where possible.

The degree to which consultation affects the decisions made varies widely, and depends on:

- the nature of the proposal being addressed;
- the interested parties affected; and,
- the proponent.

Proponents are encouraged to clearly define:

- how decisions will be arrived at during the EA process;
- who will make decisions; and,

- what role those consulted can expect to have in the decision-making process.

In some cases, those that are consulted may not wish to be involved in the decision-making process. In other cases, the proponent may be constrained as to which decisions those consulted can influence – for instance, complying with legislation. However, in most cases, there are various opportunities in the EA process where public participation and input would be meaningful. For example, consulted parties may participate in or provide input to the information base used to conduct the analysis of alternatives; the selection of criteria for the evaluation of alternatives; the visual design of a project; and/or, the identification of potential effects of a proposed undertaking and appropriate mitigation.

1.4 What Is Consultation Meant to Achieve?

In the EA process, consultation is intended to help proponents achieve public acceptance of the final proposal by ensuring that the proposal is in the public interest. Consultation alone cannot ensure that a proposal is in the public interest; however, proponents who are responsive to concerns raised during the process are more likely to develop an acceptable proposal than proponents who choose to ignore public input. During consultation, opponents of a proposal may express views that create a divergence of opinion among the public. This is a risk that proponents must accept when presenting a proposal for public comment.

Consultation is essential for any EA-related decision, and proponents are legally required to undertake consultation during the preparation of ToR and EA documents.

In the EA program, consultation is meant to achieve five goals:

- to make the public aware of a proposal;
- to ensure that the public is provided with opportunities to participate in the decision-making process and to influence decisions that will affect them;
- to identify the widest range of potential issues about a proposal as early as possible and, in some cases, get them resolved;
- to ensure that government agencies and ministries are notified and consulted early in the process; and,
- to ensure a broad range of perspectives are considered in any decision.

2.0 Environmental Assessment Act Requirements for Consultation

Although responsible environmental decision-making is the concern of all citizens, businesses and government agencies in Ontario, proponents are responsible for ensuring that all those who may be affected or who may be interested in an undertaking are consulted. Proponents are responsible for developing and implementing a consultation strategy that ensures that interested parties are informed about the proposal and provided with opportunities to review and comment on it.

2.1 Obligation to Consult During the Preparation of ToR and EA Documents

For proponents, consultation with interested parties is a legal requirement of the EAA. Section 5.1 of the EAA states: **"When preparing proposed terms of reference and an environmental assessment, the proponent shall consult with such persons as may be interested"**. Section 13.1 imposes similar obligations on the proponent to consult with interested parties when preparing a proposed ToR for a Class EA document.

Subsection 6.3(3) specifies that a ToR must be accompanied by a description of the consultations undertaken during the preparation of the ToR and the results.

Clause 6.1(2)(e) specifies that the EA must describe the consultations carried out by the proponent and the results of the consultations. Clause 14.2(6) specifies that the Class EA document must describe the process to be used by the proponent to consult with the public and anyone who may be interested and/or affected by the undertaking.

2.2 Consultation During Submission of EA Documents

Subsections 6.3(1) and 6.3(2) of the EAA require the proponent to notify the public when submitting an EA to the Minister of the Environment (the "Minister") for approval and to indicate where and when the EA can be inspected by members of the public. Subsection 6.3(3) requires the proponent to notify the municipality or municipalities in which the undertaking is proposed, and subsection 6.3(4) allows the Director of EAAB to require the proponent to notify anyone else the Director may specify.

Subsections 6.4(1) and 6.4(2) of the EAA specify that any person **"... may inspect the environmental assessment in the places and at the times set out in the public notice"** and **"... may comment in writing on the undertaking or on the environmental assessment..."**.

The ministry also consults with the public before making a decision about an application for approval to proceed with an undertaking. Once the review of an EA is complete, the ministry must, under subsections 7.1(2) and 7.1(3) of the EAA, notify the public that the review is complete, indicate where and when members of the public may inspect the review and provide instruction about how to submit comments. Under subsections 7.2(1) and 7.2(2), any person may inspect the review and may provide comments about **"the undertaking, the environmental assessment and the review"**.

When making a decision about the application for approval to proceed with the undertaking, the Minister must consider the comments received under subsections 6.4(2) and 7.2(2). Similarly, when matters are referred to the Environmental Review Tribunal or Joint Board for a decision, the Environmental Review Tribunal or Joint Board must consider the comments received under the aforementioned subsections.

3.0 Consultation and the Environmental Assessment Process

3.1 Roles and Responsibilities

The EA decision-making process involves many different players, each of whom has a different role. The overall responsibility for making responsible environmental decisions is a shared one, and the following section outlines the roles of proponents, interested parties, government reviewers and EAAB.

3.1.1 Proponents

Proponents initiate projects subject to the EAA and have the principal responsibility for designing and implementing consultation programs, as part of the overall EA decision-making process. Proponents are responsible for:

- designing and implementing a consultation program that provides opportunities for two-way communication;
- initiating meaningful consultation with interested parties to identify information needs and concerns early in the planning process before the ToR is submitted;
- identifying interested parties throughout the process, including those likely to be directly affected and any others that may be potentially affected;
- identifying and consulting with those government reviewers with an interest in the proposal;
- identifying what degree of involvement is required of the public and government reviewers at each decision point (dependent on the scope of the project and the willingness and capability of the proponent to share decision-making responsibilities);
- determining the type of feedback/input desired from the public and government reviewers (comment, dialogue, consensus);
- explaining the EA process for the undertaking and clarifying how participants can contribute to the decisions and what decisions participants can influence;
- respecting and considering the concerns, risks and uncertainties raised by the public and government reviewers and making every effort to address them throughout the decision-making process;
- keeping interested parties informed of decisions made and how the proponent addressed concerns raised or reasons that concerns were not addressed;
- determining, with assistance from appropriate government reviewers, those permits, licences and approvals that may be required for the construction, operation and maintenance of the undertaking, if approved;
- determining the information needs of those to be consulted, and providing appropriate materials;
- providing adequate time for interested parties to review and comment on EA-related materials and documentation;
- monitoring the effectiveness of the consultation program and adjusting it as necessary;
- addressing and where possible, resolving issues and concerns raised through the consultation process;

- documenting the consultation undertaken and the results of that consultation in submissions made to the ministry.

3.1.2 Interested Parties

Interested parties are those who indicate an interest in and/or consider themselves to be potentially affected by a particular project. Interested parties are encouraged to participate in the EA process for proposed undertakings.

Parties with an interest in a particular undertaking often include neighbours and individuals, First Nations and other aboriginal communities and individuals, special interest groups, environmental groups or clubs, naturalist organizations, agricultural organizations, sports or recreational groups, organizations from the local community, ratepayers associations, cottage associations, and businesses.

The role of interested parties includes activities such as:

- providing the proponent with an indication of their level of interest and identifying how they wish to participate;
- participating in the consultation opportunities provided throughout the EA process;
- sharing information about the community and local environment to assist the proponent in making decisions;
- expressing opinions about the risks and merits of a proposed undertaking as early in the planning process as possible;
- identifying issues and concerns a proposed undertaking may pose as they arise throughout the EA process;
- suggesting modifications to a proposed undertaking that would address concerns;
- working with the proponent, other interested parties and government agencies to arrive at mutually agreeable solutions that address issues and concerns as they arise.

3.1.3 Government Review Team²

Government reviewers provide valuable support to a proponent by identifying compliance issues and other areas of concern within their jurisdiction. They are often very knowledgeable regarding local issues and may help in the identification of those local interest groups that the proponent should consult. Proponents are encouraged to involve relevant members of the Government Review Team and other government agencies (provincial, federal, municipal) from the outset of their planning process.

When the proponent makes a submission to the ministry, of either the ToR or the EA documentation, the submission is formally reviewed by the Government Review Team to

² EAAB maintains a Master Distribution List from which government agencies are identified. The identified agencies make up the Government Review Team for the undertaking. Proponents are encouraged to refer to this list when designing the agency portion of their consultation program. An updated version of the Master Distribution List can be obtained by contacting EAAB at 1.800.461.6290 or 416.314.8001.

determine if the proponent has adequately considered the legislation, regulations, policies and program areas within their respective mandates.

Members of the Government Review Team are responsible for:

- providing advice and direction, within their mandated areas of responsibility, that the proponent must consider as part of the decision-making process;
- providing a consistent position throughout the course of a decision-making process, or providing relevant reasons if their positions change;
- providing the proponent with timely input that facilitates good decision-making;
- participating in the government review of submissions made to the ministry for the proposed ToR and EA;
- providing comments to EAAB within regulated time lines for reviews;
- identifying and confirming environmental effects related to their mandate.

3.1.4 The Environmental Assessment and Approvals Branch

The principal responsibility of EAAB is to provide advice and guidance about the requirements of the EAA to allow proponents and the Minister to make informed decisions. Once the ministry receives a formal submission of a ToR or an EA, EAAB coordinates the government review of the proponent's submission and advises and reports to the Minister about whether the proponent's submission fulfils the requirements set out in the EAA and meets expectations described in relevant ministry guidelines. In addition to administering the EAA, EAAB is responsible for:

- providing information to proponents and interested parties on the requirements of the EAA;
- promoting responsible EA decision-making by providing procedural advice throughout the EA process;
- coordinating the formal review of the ToR and EA documents by the Government Review Team and the public;
- encouraging the resolution of outstanding issues among the parties, when necessary;
- making a final recommendation that assists the Minister to decide whether to approve or reject a ToR;
- making a recommendation that assists the Minister to decide whether to grant approval to proceed with an undertaking; and,
- providing "one window access" service for other Acts administered by the ministry, such as the coordination of approval/permitting/licensing processes for *Pesticides Act*, *Ontario Water Resources Act*, and/or *Environmental Protection Act* requirements for a EA proposed undertaking.

3.2 The EA Process - Consultation Before Submission

The EA process consists of a series of planning steps and decisions. Consultation with government reviewers and interested parties occurs at each of these steps. Throughout the EA process, the proponent should review the assumptions made in the previous step to confirm their accuracy.

There are two primary stages in the completion of an EA for an undertaking:

1. **Terms of Reference (ToR):** the framework the proponent uses to conduct the EA and to prepare EA documentation;
2. **Environmental Assessment (EA):** the planning process, conducted in a manner that is consistent with the commitments made in the ToR, to ensure that the proposed undertaking was based on sound environmental decision-making with public input.

Proponents are expected to seek input from government ministries and agencies and interested parties, before submitting any documents for approval under the EAA. Early consultation will ensure that the proponent is informed about government expectations prior to submitting a ToR or an EA. In addition, early consultation enables potentially significant environmental issues to be identified early in the decision-making process, and to ensure that they are given appropriate consideration in the preparation of the EA.

3.2.1 The Terms of Reference Stage³

A key feature of Ontario's EAA is the requirement for EAs to be prepared and carried out according to an approved ToR. Once the ToR is approved by the Minister, it becomes a framework for the preparation of the EA. In a ToR submission, proponents are required to submit both a consultation summary that describes the consultation undertaken during the development of the ToR and a consultation plan that describes how input will be sought during the development of the EA document.

When preparing the ToR document, the proponent must consult with government reviewers and interested parties. Proponents should consider obtaining input on aspects such as:

- the alternatives that are to be considered during the EA process;
- the methods to be used to assess the environmental effects of the alternatives;
- the criteria that will be used to evaluate the alternatives;
- any issues or concerns the potential undertaking may pose;
- the methods to be used to resolve issues and concerns;

³ For detailed information about Terms of Reference, please consult the ministry's "A Guide to Preparing Terms of Reference for Environmental Assessments", available through the EAAB by calling: 1.800.461.6290 or 416.314.8001

- how input will be sought during the EA process;
- at which point(s) in the EA process consultation will take place.

Participation in the ToR process by the appropriate government agencies and the public will enable proponents to embark on their EA decision-making process with added certainty and clearer direction. The ToR approach places the onus on the proponent to determine an appropriate starting point to initiate the EA process. This provides flexibility and allows proponents to put forth proposals that consider feasible alternatives, take into account environmental effects, and reflect the results of local decision-making, public opinion, as well as circumstances specific to the proposal (i.e. the proponent's situation, timing, financing).

3.2.2 The Environmental Assessment Stage

When preparing the EA document, the proponent must consult with government reviewers and interested parties on issues such as:

- concerns or issues related to the proposed undertaking;
- commitments proposed by the proponent to address concerns or issues raised;
- the level of detail required in technical reports;
- the final evaluation of alternatives and the selected alternative;
- the usefulness or otherwise of preparing a draft EA document.

3.3 The EA Process - Consultation After Submission

3.3.1 Reviews

Once a proponent submits a ToR or an EA document for review, the proponent must notify the public of the submission. This notice must also include information about where the document(s) are available for public inspection and how comments and/or concerns should be submitted to the ministry.

Upon receipt of ToR or EA documentation by a proponent, EAAB coordinates a government review of the submission by soliciting input from the Government Review Team. A concurrent public and agency review of the documentation allows EAAB to identify and resolve issues early in the review and decision-making process.

Comments received from the public for an EA submission is taken into consideration during the preparation of documentation of the government review. Although many issues may be addressed through the proponent's consultation process, there may be further opportunities for participants to deal with outstanding issues through appropriate conditions of approval. The government review includes a section outlining draft conditions, if any, that were developed during the government and public review process.

3.3.2 Consultation after the Publication of the Government Review

After the government review is completed, a *Notice of Completion of Review* is published by the Director of EAAB. This notice informs the public that the government review is completed and the results documented. The *Notice of Completion of Review* provides a minimum five (5) week public review period. Anyone, including government agencies, can provide further comments in writing at this time. Comments received after the publication of the government review document are considered during the Minister's decision.

3.3.3 The Public Record

The Director of EAAB must maintain a record of each proposed undertaking for which an application for EAA approval is submitted and make it available to anyone who wishes to view it. To meet this requirement and to comply with Ontario's *Freedom of Information and Protection of Privacy Act* (FOIPPA), proponents and the general public should note that:

- all general information about an undertaking is open for public review, subject to any FOIPPA exemptions that may apply; and,
- all personal information on file related to an undertaking is open to public review under FOIPPA, unless the person to which the information pertains expressly requests, in writing, that their personal information not be released.

All documents submitted by a proponent form part of the EAAB's public record. Therefore, proponents should be clear with the public about how they plan to document the consultation results, and how legislative requirements under both the EAA and FOIPPA will be met.

3.3.4 Consultation if an EA is Referred to a Hearing

The Minister has the right to refer either the whole EA or just certain matters related to the EA to the Environmental Review Tribunal for a hearing. The likelihood of the Minister referring a whole EA to the Environmental Review Tribunal is greatly diminished if the proponent and interested parties have participated in consultation.

The Environmental Review Tribunal emphasizes the need for parties to reach agreement on as many issues as possible prior to a formal hearing. The Environmental Review Tribunal's *Guideline for Consideration of Agreements* (November 3, 1998) among parties states that it will accept and formally adopt pre-hearing agreements if:

- they represent the combined interests of the proponent, those affected, regulatory authorities and other affected governments; and,
- the undertaking is consistent with the purpose and provisions of all relevant legislation and is in the public interest.

The Environmental Review Tribunal requires documentation explaining the rationale for the agreements reached and may or may not request that additional evidence be provided orally.

The Environmental Review Tribunal may decide that a formal hearing is not necessary and will approve the project if, following a public meeting, the following conditions are met:

- the parties are able to arrive at an agreement;
- the parties are willing to waive their right to a hearing; and,
- the Environmental Review Tribunal is satisfied with the documentation.

Alternative dispute resolution is a method of settling disputes outside of a tribunal process and may be appropriate prior to the start of a formal hearing. Proponents are encouraged to reconsider how these techniques could apply at this stage in the process. It may be that parties are not able to arrive at an agreement that resolves all the outstanding issues. Parties are encouraged to settle as much as they can and bring to the Environmental Review Tribunal only those issues that remain unresolved. This can result in a much shorter hearing and a less costly process.

3.4 Completion of EA Process - Project Implementation

If the Minister or the Environmental Review Tribunal approves the EA, the proponent is required to ensure that any commitments made as part of the EA documentation, or conditions of approval, are fulfilled. Although the formal EA process is complete at this point, consultation should play an important role in the implementation of applicable conditions of approval or monitoring requirements. Commitments or conditions requiring the proponent to conduct monitoring may also include a requirement to do further consultation. The level of consultation and/or involvement of affected parties after the EA process is completed varies. Generally, the more contentious the project, the greater the involvement of affected parties during the implementation phase of the undertaking.

4.0 The Consultation Program

Successful consultation strategies share some common elements. Nevertheless, to be effective, consultation must be tailored to the unique needs of the project and community involved. This section describes some important elements proponents may want to consider in the development of a consultation strategy. It provides a starting point for proponents and is not intended to restrict the development of innovative programs.

Effective Consultation and the EA Process			
<i>Benefits</i>	<i>Principles</i>	<i>Elements</i>	<i>Indications</i>
<ul style="list-style-type: none">• First-hand information• Better informed environmentally-sound decisions• Potentially affected help determine mitigation• Compliance with permits, licences and regulatory requirements	<ul style="list-style-type: none">• Respect• Clarity• Accessibility• Mutual responsibility• Community values	<ul style="list-style-type: none">• Clear objectives• Identification of interested parties and agencies• Appropriate resources• Appropriate methods• Identification of issues• Integration of consultation inputs• Resolution of issues and conflicts• Participant support• Evaluation• Documentation	<ul style="list-style-type: none">• Interested parties and agencies participate• Input was useful and affected decisions• Issues and conflicts were raised and, where possible, resolved• Documentation reflects process and results• Unresolved issues are clearly stated

4.1 Principles in Designing and Conducting Consultation in the EA Planning Process

At the outset of the EA decision-making process, proponents are encouraged to develop principles to guide the consultative process. These principles, which should be articulated in the proponent's consultation plan, set the tone of the consultation process and reassure potential participants of the value of the process.

The Ministry of Transportation's Class EA document⁴ presents an excellent example of consultation principles such as:

- interested parties will be consulted at the beginning of the study before the proponent becomes committed to any one solution;
- the proponent will constructively address input received during the process;
- the proponent will show how the input received affected the project; and,

⁴ The Ontario Ministry of Transportation's *Class Environmental Assessment for Provincial Transportation Facilities* (July 2000) document can be purchased from Ronen House tel: 1.800.856.2196 or 416.502.1441. A copy of this manual (reference 102NR0018) can also be downloaded from the Ronen House website at: www.ronenhouse.com.

- the proponent will make reasonable efforts to resolve concerns.⁵

It may be that a proponent has a set of principles in place from the outset, perhaps as part of a corporate vision statement or strategic plan. Perhaps these principles can be easily adapted to become part of the consultation program. Proponents may find it helpful to include a set of principles in their initial consultation and to specify the extent to which these principles can be modified.

4.2 Important Elements of a Consultation Program

This section describes ten important elements that proponents should consider for a successful consultation program:

- clear objectives of consultations;
- identification of interested parties and government agencies;
- appropriate resources;
- appropriate consultation methods;
- identification of issues;
- integrating input from consultation efforts with technical work;
- resolution of issues and conflicts;
- participant support;
- proponent evaluation of consultation efforts;
- documentation of consultation efforts.

As required in the EAA, proponents must consult with potentially interested and affected persons. Therefore, the consultation program should, at a minimum:

- identify potentially interested and affected parties;
- notify potentially interested and affected parties of the proposed undertaking;
- ensure that interested and affected parties are consulted during the preparation of the ToR;
- identify the points in the EA process when participants will be consulted;
- identify the methods that will be used to consult;
- identify the decisions that participants can influence and what role participants will play in arriving at decisions;
- acknowledge and attempt to address issues and concerns raised during the EA process;
- document how input received from participants was taken into account.

4.2.1 Clear Objectives of Consultations

At the outset, proponents should make a determination of the type and extent of feedback required from the public and government reviewers. The appropriate level of participation can

⁵ See Chapter 5 of the Ministry of Transportation's Class EA document.

be confirmed by asking potential participants how they would like to be involved in the EA process. Based on that feedback, proponents should establish the objectives of consultation for each stage of the EA process, in conjunction with the development of a consultation plan for the EA as part of a proposed ToR submission.

The objectives of consultation programs vary greatly, depending on the complexity of the project being proposed, the significance of the anticipated effects, the composition of the community affected and the mandate of the proponent. As objectives of the consultation program may change over time, the proponent should review them periodically to ensure they continue to be appropriate, and revise the program where appropriate.

These questions should be considered when developing consultation objectives and the consultation plan:

- How has the community historically responded to change?
- Is the proposal likely to be contentious?
- What level of interest from the public and agencies is anticipated?
- What specific information needs will they have?
- What information can be obtained from participants?
- What weight will be given to the information and ideas obtained through consultation? For instance, how will traditional knowledge provided by aboriginal communities be considered?

Clear, explicit objectives can:

- ensure that proponents, participants and reviewers have realistic expectations of their role in the process; and,
- provide benchmarks against which the consultation program can be measured.

4.2.2 Identification of Interested Parties and Government Agencies

One of the keys to effective ToR and EA development is the early identification of interested parties and appropriate government reviewers.

Interested parties bring critical local knowledge and can identify issues or conflicts that could potentially arise. Proponents are encouraged to anticipate as broadly as possible who the interested parties may be because parties that are left out of early decisions may have concerns that are difficult to address later in the EA process. Once interested parties have been identified, developing a profile of the community will help identify the linguistic and cultural composition, geographic distribution and lifestyles of those to be consulted. These considerations often have a bearing on how the consultation should be designed and conducted, what materials are prepared, and how best to support the participation of interested parties. Interested parties with whom the proponent should consult can change during the course of an EA, and the onus rests with the proponent to facilitate and ease the entry of new participants at any point in the decision-making process.

Various provincial, federal and municipal government ministries and agencies have an interest in a proposed undertaking that may be subject to laws, regulations, policies and programs for which they have responsibility. Staff from these ministries and agencies, who may also be members of the Government Review Team, may offer valuable input and professional expertise throughout the EA process that will assist a proponent in making decisions.

Some projects may require the involvement of the federal government if the proposed undertaking triggers certain federal department or agency duties, powers or functions. Under the *Canadian Environmental Assessment Act*, proposed undertakings require authorisation under the federal process if certain conditions apply. The federal and provincial governments are working closely to harmonize their requirements; nevertheless, the proponent should ensure that appropriate contacts with federal agencies, including the Canadian Environmental Assessment Agency, are made early in the process to avoid conflicts or delays.

Benefits of early and ongoing identification of interested parties and government agencies include:

- assisting the proponent in determining participants' interests and needs;
- ensuring that the proponent derives the full benefit of community knowledge in arriving at decisions;
- enhancing the potential for garnering community support;
- minimizing the possibility of parties coming in at the end of a process and objecting to the outcome of the process; and,
- reducing the potential for hearing and/or mediation requests.

4.2.3 Appropriate Resources

The resources needed to consult – both human and financial – depend on the nature of the proposal being addressed, the scope of decision-making required, the needs of the community, and the capabilities of the proponent. The allocation of resources to the consultation plan is the proponent's responsibility. Whether in-house resources are used or outside consultants retained, the proponent's choice of a central contact person, to whom participants can direct their questions and comments, can influence the success of consultation efforts.

Consultation programs should be designed with realistic budgets that include a contingency amount in case unexpected levels of interest are generated, or extra effort is required.

The benefits of allocating appropriate resources to consultation efforts are:

- participants receive information in a timely fashion and are equipped to participate effectively;
- issues or concerns raised by participants are addressed and responded to efficiently; and,
- specific concerns raised through the consultation process are responded to by reaching the appropriate member of the study team or the proponent.

4.2.4 Appropriate Methods

When selecting appropriate consultation methods, proponents should review the nature of the project, the objectives of the consultation program and the needs of interested/affected parties. Examples of the range of possible objectives include disseminating information; monitoring public response; issue resolution; and/or, detailed problem solving. Different consultation methods that could be used include: newspaper notices; newsletters; press releases; one-on-one meetings; public meetings; information centres; workshops; open houses; surveys and focus groups; radio and television programs; shopping mall displays; and/or, toll free telephone lines.⁶

Conferring with interested parties about the selection of consultation methods will result in a unique and effective program.

Approaches to consultation with interested parties

In deciding how to involve interested parties in the EA planning process, the proponent will need to consider which decisions participants will be able to influence and to what extent they will be involved in making a particular decision. For some decisions it may not be possible for the proponent to share the decision-making, whereas, for other decisions, it may be desirable to arrive at a decision cooperatively.

Informative Consultation

Information programs may be used when no sharing of decision-making is possible or when the decision-making process does not require any decisions be made. Information is provided to interested parties to keep them informed about the progress of the planning process. This is an approach most useful on small projects that pose minimal effects and are understood by all to be in the public interest.

Responsive Consultation

This approach is used when the proponent is seeking a moderate level of participation from interested parties. Responsive consultation provides opportunities for participants to respond to information provided by the proponent on the planning process being followed and decisions made. The proponent indicates to participants how their response will affect the planning

process. This approach is most useful in cases where some effects are anticipated and the proponent is able and willing to respond to participant suggestions on how to ease negative effects.

Joint-planning Consultation

A consultation program that includes joint-planning involves participants directly in decision-making. The proponent and participants agree to arrive at decisions cooperatively and to accept the outcome generated.

Delegated Authority Consultation

This approach differs from joint-planning in that the proponent delegates the decision-making authority for certain decisions to participants. However, the proponent maintains areas where it is not prepared to delegate authority and wishes to arrive at decisions on its own or jointly with interested parties.

Community-based Planning

In the community-based planning approach, parties manage the planning process and arrive at all decisions independent from the proponent, but the proponent agrees to abide by the decisions. In these cases, the proponent acts only as a resource.

⁶ For a more detailed description of consultation methods and techniques, refer to the ministry's *Public Consultation Guide*, 1994

Using an effective mix of consultation methods provides benefits such as:

- target audiences of the consultation are reached;
- input received is of relevance to the project and therefore, of use to the process; and,
- resources are used efficiently.

4.2.5 Identification of Issues

At the outset of an EA process, proponents should ask interested parties what issues they anticipate the EA decision-making process will raise, so that the consultation plan can be tailored to address them. A proponent's failure to recognize issues early in the process can result in participants rejecting the credibility of the proponent's consultation program and refusing to participate in consultation opportunities because community concerns are not being addressed.

Participants are encouraged to inform the proponent of issues as they arise, so that options can be fully explored and mutually agreeable solutions developed before decisions are made and before moving forward to the next step in the EA process. If participants do not raise concerns and issues in a timely manner, the proponent may be restricted from fully exploring alternatives and developing appropriate measures to address them later in the decision-making process. The timeliness with which issues were raised will also be a factor when the Minister makes a decision about whether to approve or reject a ToR or EA, or to refer matters to mediation or a hearing.

Benefits of early and ongoing identification and resolution of issues are:

- minimizing the possibility of having to revisit past decisions;
- reducing the potential for participants to request the Minister to refer ToR or EA submissions to mediation or a hearing;
- increasing opportunities for proponents and interested parties to arrive at mutually agreeable solutions prior to submission of the ToR or EA document.

4.2.6 Integrating the Input from Consultation with Technical Work

Proponents should allow sufficient time to solicit, receive and integrate the results of consultation into the technical work. The methodology selected for soliciting input – such as through comment sheets, interviews or other methods – must produce data in a format useable to those conducting the technical analysis.

The ministry expects the consultation summary in ToR or EA submissions to show how information provided by participants has been incorporated into the proposal and how the input received has influenced decision-making. Decisions not to respond to or not to address input should be justified.

Benefits of integrating the results of consultation into the technical work are:

- reassuring participants that their input is valued and influences decision-making;
- ensuring that relevant legislation and policies administered by other government agencies are accounted for; and,
- demonstrating to participants the value of the EA process.

4.2.7 Resolution of Issues and Conflicts ⁷

Proponents are urged to make every effort to address, and resolve where possible, any issues, concerns and conflicts that occur during the EA process in order to avoid costly delays. Leaving issues unaddressed creates a perception that the proponent does not treat concerns seriously, and will ultimately, damage the credibility of the proponent, the EA process and the proposed undertaking. Some basic steps to consider in responding to/addressing issues raised include:

- meeting one-on-one with those individuals or parties with specific concerns;
- initiating smaller working sessions for interested parties to attend to provide an opportunity for everyone to hear all sides;
- formatting meeting agendas to specifically address unresolved issues; and,
- establishing a citizen-led committee to provide a forum specifically for issue resolution.

If the proposed undertaking might benefit from involving a third party to provide some balance of power and neutrality to discussions, conflict resolution techniques, such as those that follow, are available to the proponents at any point in the EA process.

Not all matters can be resolved with certainty. If the project is approved, a proponent will usually be required to address remaining uncertainties through conditions of approval and/or commitments that may include terms such as monitoring, feedback, and contingency plans and reports, and a liaison committee that meets periodically during construction and implementation.

⁷ Please refer to the ministry's guideline, *"The Use of Mediation in Ontario's Environmental Assessment Process"*, available through the EAAB by calling: 1.800.461.6290 or 416.314.8001.

	<u>Facilitation</u>	<u>Negotiation</u>	<u>Mediation</u>	<u>Arbitration</u>
When useful	All sides willing to participate	Sides agree on areas where there is conflict or absence of agreement, want resolution, but differ on specific solutions	Absence of common ground between or among sides; constructive discussion not possible without intervention	Sides unable to reach mutually agreeable solutions and agree to abide by decision reached by a neutral third-party
Purpose	Provides a process that identifies areas of mutual concern and potential issues and conflicts	Provides a process for sides to work together to arrive at solutions	Provides a process that improves relationship between proponent and interested parties and results in a negotiated solution	Equips neutral third-party with relevant information to reach a decision
Who Leads	Facilitator – may be in-house resource or a facilitator retained by proponent	Representatives of each side; may also involve a neutral third-party retained by proponent as facilitator	Neutral third-party either retained by the proponent or appointed by the Minister	Neutral third-party acceptable to all sides retained by the proponent
Specific activities	One-on-one meetings, sessions with all sides	One-on-one meetings, sessions with all sides	One-on-one meetings, sessions with all sides	One-on-one meetings, sessions with all sides
Desired outcome	Consensus or narrowed list of unresolved issues	Mutually agreeable solutions to conflicts	Mutually agreeable solutions to conflicts	Mutually agreeable solutions to conflicts

4.2.8 Participant Support

It is in the best interest of the proponent to ensure that interested parties are able to participate meaningfully in the EA process. Proponents are encouraged to be innovative in identifying appropriate measures for effective participation in the EA process. Proponents may find that providing support to participants may make the difference between a consultation program that works and one that does not. At the same time, participants should have realistic expectations of what levels of assistance a proponent can provide.

The extent and nature of participant support can be determined by:

- identifying the particular needs of those participating;
- being aware of the type of input sought from interested parties relative to the technical complexity of the EA; and,
- the availability of financial and human resources to the proponent.

Examples of various forms of participant support are:

- providing meeting facilities that are accessible to persons with disabilities;
- reimbursing travels costs or child care costs for participant attendance at consultation events;

- providing administrative support (such as photocopying information materials, arranging venues for community discussions, postage and mailing services) to affected/interested parties; and/or,
- providing funding for peer review of technical work produced for the EA.

Benefits of providing participant support are that it:

- encourages the participation of interested parties;
- attempts to ensure that no one is prevented from participating to the degree to which they would like to;
- promotes early identification of issues and concerns;
- acknowledges the volunteer efforts of participants; and,
- enhances the credibility of both the EA process and the proponent.

4.2.9 Proponent Evaluation of Consultation Efforts

Measures that determine the effectiveness of the consultation program should be in place at the outset of the consultation. These measures can range from public opinion surveys to a simple list of questions the proponent asks throughout the EA process, such as:

- Are the objectives as stated in the consultation plan being achieved?
- Is the program generating the desired/anticipated level of participation?
- Are there any barriers to interested parties participating in the process?

Evaluating the results of consultation efforts allows a proponent to identify when actions, such as the following, are required:

- implementing alternative methods to enhance participation;
- providing participant support, where appropriate, to facilitate review and comment by interested parties; and/or,
- adjusting the study schedule to ensure adequate time for participant review and integration of input received.

4.2.10 Documentation

Documentation of the consultation undertaken for an EA allows participants an opportunity to see how their input has affected the decision-making process. In ToR and EA submissions, proponents should describe matters such as:

- the consultation process, including the consultation plan, schedule of events, contingencies and methods used;
- the consultation that has taken place, with whom and the purpose;
- how consultation results affected the decision-making process;
- the issues, concerns or conflicts that were raised and how they were responded to;
- agreements or commitments arrived at to address issues and concerns;
- outstanding issues, concerns and conflicts and why they are still outstanding.

Any documentation prepared for review by the public should avoid technical jargon in order to facilitate understanding and promote useful and informed feedback. Proponents may find that reporting on consultation efforts and producing a regular, concise and relevant update of an undertaking's progress is more effective than producing a single, comprehensive consultation report at the end of the EA process. Some proponents have found that listing both the issues raised by participants and the response of the proponent to each to be a helpful format.

4.3 What the Ministry Looks For When Assessing a Consultation Program

EAAB will include, in the recommendations to the Minister regarding the ToR or EA, a brief analysis of the adequacy of the proponent's consultation program. Factors used in assessing the consultation program include, but are not limited to:

- Did the proponent allow interested parties to participate in a *reasonable* and *meaningful* way?
- Will the proponent's consultation strategy, as presented in the ToR, adequately address issues during the preparation of the EA?
- Was the input received through the consultation taken into account by the overall study process? Did the proponent attempt to incorporate comments and concerns?
- Was an appropriate mix of consultation methods selected?
- Did the consultation process ensure that participant interests, issues and matters of potential dispute were identified?
- Were continued efforts made to identify participants and were opportunities provided for them to be involved?
- Are explanations provided where the proponent chose not to respond to input/to address issues and concerns?
- How were issues, concerns and conflicts addressed and/or resolved? Were efforts made to take care of the risks and uncertainties posed by the undertaking?
- Is the documentation clear and concise? Does it report on the results of consultation? Does it include commitments made and/or agreements reached?
- Did ToR or EA submissions received by the ministry during the public comment period identify any deficiency in the proponent's consultations?

This guideline was designed to provide proponents and other interested parties with an understanding of consultation and its place within the EA process. For more information about Ontario's EA process, please contact:

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